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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,079	01/20/2000	David R. Montague	2779.2.2	3921

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EXAMINER

MYHRE, JAMES W

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 02/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/488,079**

Applicant(s)  
**Montague**

Examiner  
**James W. Myhre**

Art Unit  
**3622**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 21, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action during the October 21, 2002 interview was persuasive and, therefore, the finality of that action is withdrawn. The actual arguments with respect to the previous rejection have been considered but are moot in view of the new ground(s) of rejection below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5-12, 15-19, 22, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dlugos Sr. et al (5,153,842).

Claims 1, 11, 18, and 24: Dlugos discloses a method and apparatus for attaching product labels comprising:

- a. Affixing a label to a product surface (col 5, lines 48-56);
- b. Configuring the label to provide information corresponding to at least the product and/or source of product (col 3, lines 53-57); and

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c. Coupling a computer readable medium containing computer executable instructions (i.e. program) to the label (col 3, lines 39-42).

Claims 2, 12, and 19: Dlugos discloses an apparatus for attaching product labels as in Claims 1, 11, and 18 above, and further discloses the information is printed on the label (col 3, lines 19-23).

Claims 5, 15, and 22: Dlugos discloses an apparatus for attaching product labels as in Claims 1, 11, and 18 above, and further discloses the computer readable medium containing information pertaining to product facts, source facts, data gathering interface, and many other types of information for use by the receiver, sender, and/or shipper (col 9, lines 49-62).

Claim 6: Dlugos discloses an apparatus for attaching product labels as in Claim 1 above, and further discloses that the label may be attached in various ways to a wide variety of products (col 5, line 48 - col 6, line 23).

Claim 7: Dlugos discloses an apparatus for attaching product labels as in Claim 6 above, and further discloses placing the label onto the product in a manner which protects the label from damage (col 5, lines 48-56).

Claims 8 and 16: Dlugos discloses an apparatus for attaching product labels as in Claims 1 and 11 above, and further discloses the label is a hang tag enclosing the computer readable medium (col 5, lines 48-56).

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Claims 9 and 17: Dlugos discloses an apparatus for attaching labels as in Claims 1 and 11 above, and further discloses that the computer readable medium includes a printed medium or an electromagnetic medium (col 3, lines 19-23 and 39-52).

Claim 10: Dlugos discloses an apparatus for attaching product labels as in Claim 9 above, and further discloses that the computer readable medium is formatted as a bar code or embedded chip (col 3, lines 12-13, col 4, lines 52-57, and col 4, line 67 - col 5, line 8).

Claim 25: Dlugos discloses a method for attaching product labels as in Claim 24 above, and further discloses that the product is packaged with a "clear plastic film or packing material containing air bubbles" (col 5, lines 49-51).

Claim 26: Dlugos discloses a method for attaching product labels as in Claim 24 above, and further discloses that the label is attached to the outside of the product using a flexible member (i.e. the label is a tag)(col 5, line 60 - col 6, line 2).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 3, 4, 13, 14, 20, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dlugos Sr. et al (5,153,842).

Claims 3, 13, and 20: Dlugos discloses an apparatus for attaching product labels as in Claims 2, 12, and 19 above, but does not explicitly disclose that the printed information is contained in a selection of color on the label. Official Notice is taken that it is old and well known within the marketing arts to use color to differentiate between various labels and tags; such as a clothing store using pink hang tags to indicate that the garment's size is Small, light blue hang tags to indicate that the garment's size is Medium, and green hang tags to indicate that the garment's size is Large. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use labels of various colors in Dlugos. One would have been motivated to use labels of different color in order to facilitate quick and easy identification of the product or product manufacturer by the merchant, the shipper, and the customer (e.g. a blue label for a product made by IBM, whose nickname is "Big Blue").

Claims 4, 14, and 21: Dlugos discloses an apparatus for attaching product labels as in Claims 1, 11, and 18 above. While Dlugos prefers that the label is the same size and shape as a credit card, it is also disclosed that the label "may be of an overall shape or size different from the standard credit card" (col 6, lines 11-23). However, Dlugos does not explicitly disclose using a trademark symbol on the label to identify the product or the source of the product. Official Notice is taken that it is old and well known within the marketing arts to use trademark symbols to identify both products and product sources; indeed, that is the purpose for registering

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trademarks. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a trademark symbol on the label in Dlugos. One would have been motivated to include a trademark symbol on the label in order to facilitate quick and easy identification of the product and its source.

Claim 23: Dlugos discloses an apparatus for attaching product labels as in Claim 18 above. While various methods of attaching the label to the product are disclosed, including inserting the label into a small pouch, using clips or brackets, etc., it is not explicitly disclosed that the opening into which the label is inserted penetrates all the way into the interior of the product. However, it would have been obvious that such a method of attachment could be used, depending upon the actual product, of course. One would have been motivated to use this or other methods to attach the label to the product in order to prevent or reduce the likelihood that the label would become detached during shipping or handling as discussed by Dlugos.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Hoshino et al (2,973,410) discloses a method and apparatus for recording information onto a paper disk.

B. Abbott et al (3,562,727) discloses a method and apparatus for recording information readable by an electronic device onto a paper card which is used as a tag or label.

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C. Peterson (4,260,881) discloses a method and apparatus using electronic tags to detect packaged products.

D. Vogelgesang et al (4,812,633) discloses a method and apparatus for protecting recording regions on magneto-optical data cards.

E. Slafer et al (4,831,244) discloses a method and apparatus for recording information on optical record cards.

F. Opheij et al (4,868,373) discloses a method and apparatus for transferring information to an optical memory card.

G. Laurash et al (5,284,689) discloses a method and apparatus for assembling and attaching labels to products using various means.

H. Lipper (5,776,586) discloses a method and apparatus for including information, such as a removable tattoo, onto a hang tag.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:30 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, can be reached on (703) 305-8469. The fax phone number for Formal or Official faxes to Technology Center 3600 is (703) 872-9326. Draft or Informal faxes may be submitted to (703) 872-9327 or directly to the examiner at (703) 746-5544.



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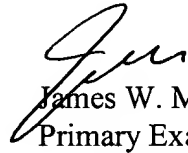
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-1113.



JWM

February 5, 2003



James W. Myhre  
Primary Examiner  
Art Unit 3622